

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
SEPTEMBER 11, 2013**

**CALL TO
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Greg Stevens, Noah Bodman, Jim Heim, Jeff Larsen, Robert Faulkner and Ron Schlegel. Gene Shellerud had an excused absence. BJ Grieve, Alex Hogle and Erik Mack represented the Flathead County Planning & Zoning Office.

There were 14 people in the audience.

**APPROVAL OF
MINUTES**

Larsen made a motion, seconded by Schlegel to approve the July 31, 2013 workshop minutes.

The motion passed by quorum.

**PUBLIC
COMMENT
(not related to
agenda items)**

Ken Weed, 975 KM Ranch Road, was concerned with amount of traffic on KM Ranch Road, the increase of traffic if the preliminary plat of Whitefish Hills Forest Phases 2-5 was approved and how maintenance of the road would be taken care of.

**BILL AND
CAROLINE
VLACHOS
(FZC 13-02)**

A Zone Change request in the Highway 93 Zoning District by William & Caroline Vlachos. The proposal would change the zoning on a 10.8 acre parcel from AG-40 (Agricultural) to I-1H (Light Industrial-Highway). The property is located at 3872 Highway 93 North.

STAFF REPORT

Mack reviewed Staff Report FZC 13-02 for the Board.

**BOARD
QUESTIONS**

Heim and Mack discussed if the secondary access for the subdivision was gated, what the access would be used for and who would be able to unlock it. They also discussed references to zoned areas in proximity to the subject property and clarified the locations on the map used as a visual aide.

**APPLICANT
PRESENTATION**

Andy Hyde with Carver Engineering, 1995 3rd Ave E, represented the applicant. He gave a history of the property and the current zoning violation. He said the applicant was present to answer questions from the board. He agreed with most of the staff report. He brought to attention the mistake of which fire department was responsible for the property. He did not agree with the comparison used for the generation of the traffic trips.

He felt boat storage did not necessitate trips every day but only twice a year. He discussed the current zoning, the limitations of the property to function as farmland, the consistency of the zone change with the Growth Policy and Riverdale Master Plan. He said landscape buffers were encouraged. The applicant had already planted landscape trees and they were healthy and growing. The applicant had maximized the setback from the highway and the north access will be an emergency access only gate to the property. The main access would be off of McDermott Lane. He was available for questions.

**BOARD
QUESTIONS**

The board and Hyde discussed what a chirp gate was, how it worked and what the applicant intended to store which was boats.

Grieve and Heim discussed the storage of gas tanks in either mini storage or boat storage.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

None.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

Grieve said the office dealt with a lot of violations. This was a case where the applicant who was in violation could apply for a zone change. He clarified the prohibition of storage of engines in mini storage and how boat storage did not fall under that restriction. He talked about the sensitivity of spot zoning concerning the application and the lack of comments from either Whitefish or Kalispell.

Stevens and Mack briefly discussed the application fee for a zone change of this size.

Bodman and Grieve discussed the referencing of light industrial uses and the similarities and dissimilarities of light industrial zoning to agricultural zoning.

Schlegel and Grieve discussed why the property was considered floodplain.

Schlegel said there had been a gas spill years ago and the contaminated material went into this spot. He was sure it was ok now, but they had dumped the material into a floodplain.

Hickey-AuClaire, Schlegel and Grieve discussed when the property had flooded.

Schlegel said the area was not actually a flood plain, only surface water collected in the area. It didn't make sense to him to have a floodplain violation on the property when contaminated materials had been dumped on the property in the past.

Grieve and Schlegel discussed the differences between floodplain and wetland designations, how those definitions affected this property and the floodplain development permit.

Hyde and Schlegel discussed a soil farm where the contaminated material had been dumped and where that property was in location to the applicant property, where the floodplain property was on the property and the affect fill had on the floodplain area.

The whole issue was of a concern to Schlegel with contaminated material and where it had been placed.

**MAIN MOTION
TO ADOPT
F.O.F.
(FZC 13-02)**

Larsen made a motion seconded by Faulkner to adopt staff report FZC 13-02 as findings-of-fact.

**BOARD
DISCUSSION**

Larsen suggested changing the reference to the correct volunteer fire department in the staff report.

Grieve and the board discussed process.

Heim pointed out another typo concerning a zoning designation on a neighboring property and asked it be remedied.

Bodman and Grieve discussed possible wording for findings of fact #14 and #15 and the reasons for amending the findings.

The board discussed the issue of the property being outside of both Whitefish's and Kalispell's zoning jurisdiction and the fact there were no plans to refer to.

**SECONDARY
MOTION TO
(Amend F.O.F.
#14 and #15)**

Bodman made a motion seconded by Larsen to amend finding-of-fact #14 and #15 to read:

- 14) Consideration has been given to the City of Kalispell's growth plan and zoning ordinance, however ~~it is not possible for~~ the proposed zoning map amendment ~~to be compatible with zoning ordinance of Kalispell~~ because it is outside the city limits and outside the plan area, therefore no documents exist that would provide guidance on compatibility and no agency referrals were received from Kalispell, *the proposed zoning map amendment does not appear to be incompatible with the City of Kalispell's growth plan and zoning ordinance.*
- 15) Consideration has been given to the City of Whitefish's growth plan and zoning ordinance, however ~~it is not possible for~~ the proposed zoning map amendment ~~to be compatible with zoning ordinance of Whitefish~~ because it is outside the city limits and outside the plan area, therefore no documents exist that would provide guidance on compatibility and no agency referrals were received from Whitefish, *the proposed zoning map amendment does not appear to be incompatible with the City of Whitefish's growth plan and zoning ordinance.*

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
(Amend F.O.F.
#14 and #15)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Bodman did not have issues with the proposal as presented, but there was one owner asking for significant changes.

The board discussed other businesses in the area and when the zoning on those properties were changed.

The board and Grieve discussed at length spot zoning, the tests for spot zoning and possible wording for an amended finding of fact.

**SECONDARY
MOTION TO
(Amend F.O.F. #1)**

Bodman made a motion seconded by Stevens to amend finding-of-fact #1 to read:

~~1) The proposed zoning map amendment to I-1H from AG-40 does not appear to be at risk of spot zoning because the Riverdale Neighborhood Plan supports the zoning map amendment, the proposed district would be comparable in size to other zoning districts, and the use does not significantly differ from prevailing uses in the area.~~

1) After lengthy discussion and consideration of the three part test for spot zoning, and knowledge that all 3 parts of the test must be met to constitute spot zoning, the Planning Board has concluded that the proposed zone change to I-1H does not constitute spot zoning because, although it is a zone change for one landowner, it is not at the expense of the surrounding landowners due to the adopted Riverdale Neighborhood Plan saying the property is 'Landfill Transition' and therefore should be Agricultural, Suburban Agricultural or Industrial land uses and land the land is not useable as agricultural, and the proposed zone is specifically meant for use along highways for public benefit and major adjacent landowners is the landfill who desire the proposed zone change, therefore all three parts of the test are not met.

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
(Amend F.O.F. #1)**

On a roll call vote the motion passed.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.
(FZC 13-02)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

None.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS
(FZC 13-02)**

Schlegel made a motion seconded by Heim to adopt Staff Report FZC 13-02 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Stevens thought the staff report was good and covered things well. It was a good effort on both the staff and board's part.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
(FZC 13-02)**

On a roll call vote the motion passed unanimously.

**WHITEFISH
HILLS FOREST
PHASES 2-5
(FPP 13-03)**

A request by Whitefish Hills Forest, LLC, (Don Murray and Mark & Donna Lies), for Preliminary Plat approval of Whitefish Hills Forest, Phases 2-5, a forty-nine (49) lot residential subdivision on 524.050 acres. Lots in the subdivision are proposed to have individual water and septic systems. The property is located north of KM Ranch Road approximately 1 mile west of Highway 93 and can legally be described as Assessor's Tracts 1 and 5 and Amended Lot 12 of Whitefish Hills Phase I.

STAFF REPORT

Hogle handed out packets to the board and reviewed Staff Report FZC 13-02 for the Board.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

Eric Mulcahy, Sands Surveying, represented the applicant. He explained the reason why the application was before the board again. He reviewed at length the layout of the site plan, what was in the original application and what the developer had completed on the project. The developer had agreed to be involved in an RSID to pave KM Ranch road. They didn't have a problem with a condition concerning wildlife habitat. The developer and DNRC had been negotiating to secure a completed easement for the subdivision. They didn't want to see specifics concerning the easement in a condition. The applicant did not have an issue concerning the conditions on the gun club and logging. He said staff did a good job on the staff report and he was available for questions.

**BOARD
QUESTIONS**

Faulkner and Mulcahy discussed how the developer would handle informing future owners of the gun range close to the property.

Bodman and Mulcahy discussed the status of the interior road, when the road would be finished in regards to development and how the water tank would relate to the road and availability to lots.

**AGENCY
COMMENTS**

Michael Collins, 655 Timberwolf Parkway, Trust Land Program Manager DNRC Northwest Montana, commented he was available for questions especially concerning the school trust lands and access across state trust lands. He gave a history of how the easements for the subdivision had been granted and said the amended easements had not been compensated for. He recommended the applicant have 45 days to resolve the situation. The application before the board was based on two roads into the subdivision which all phases were most likely to use. He said what needed to be resolved was whether the applicant wanted the rights to the easements or not. If they wanted the rights to the easements, then they needed to be prepared to make an application for the easement, pay the fee associated with the easement and assuming the Land Board would grant the easement, the applicant would receive the easement. He went over possible options if the applicant didn't want the easement. He wanted the issue with the previous easements cleaned up and work together to find a satisfactory way to move forward.

The board and Collins discussed where the easement was located, what type of easement was granted and if the condition in the staff report satisfied DNRC.

Anne Shaw Moran, 655 Timberwolf Parkway, Suite 2, Planner, Kalispell unit DNRC, said they concurred with the conditions in the staff report concerning the plat notes and if there were other ways which the purchasers were aware of the current uses they were in support of that as well. She wanted to underscore what Collins said concerning the easement situation. She felt it was time to work together to get the issue resolved and settled.

**PUBLIC
COMMENT**

Tom Sands, Sands Surveying, 2 Village Loop, explained how he had been involved in working toward a resolution to the easement issue with the developer and DNRC and felt they were close to a resolution. He went on further to explain what had

been done so far concerning the access, the fee the state wanted for the easements, what the developer wanted to pay, how he wanted to pay, the reason the reimbursement was held up and what was a fair amount to pay for the access. He went on to discuss the history the accesses, fees for the accesses, the jump in the fee amount, how much the accesses would be used and the progress of the road and the utilities.

Stevens and Sands discussed if there wasn't an agreement obtained what would be done.

Sands was confident an agreement could be reached.

Stevens and Sands discussed the amount of money the schools would receive once the lots were developed from property taxes.

Heim and Sands discussed the location and size of the easement requested.

Patrick Sullivan, 760 Whitefish Hills Drive, commented on which way to travel was faster between the two accesses to the subdivision and the confusion on the wording of the phases.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

Hogle said he had performed a site visit and was able to drive the entire road. It was passable as a graded gravel road. He addressed Bodman's question concerning paving by referring to the phasing plan.

Schlegel asked Collins what he wished to add.

Collins explained he represented the State Trust Lands for all schools across Montana and the property taxes received from the lots did not affect them. The state trust received money from many different avenues which benefited schools across Montana.

Schlegel, Heim and Collins discussed the reason for the increase in the fees for easements, if there was a grandfathered clause and if the amount for the fees stayed the same regardless of how big the easement was.

The board and Hogle discussed the reason for three roads to access the property.

**MAIN MOTION
TO ADOPT
F.O.F.
(FPP 13-03)**

Heim made a motion seconded by Larsen to adopt staff report FPP 13-03 as findings-of-fact.

**BOARD
DISCUSSION**

Stevens wanted to comment about Weed's concern made before public comment period and say neither the Flathead County Road Department nor the Montana Department of Transportation had an issue with the subdivision. Traffic increases on all the county roads. No one liked it, but that was the way it was. It was not something the board would recommend a denial for or was it by law something they could force sub dividers into building a road. He had not seen any comments by either of those two entities.

Hickey-AuClaire noticed a member of the public who wanted to speak and said a member of the board had to recognize him in order for him to speak since the public comment period was over.

Stevens recognized Ken Weeds and asked him what he wanted to add to the conversation.

Weeds said he had talked to the commissioners' and they had said they couldn't pave KM Ranch road because it was a historic road to Fort Steele.

**ASK THE
QUESTION**

Larsen asked the question.

**ROLL CALL TO
ADOPT F.O.F.
(FPP 13-03)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS
(FPP 13-03)**

Larsen made a motion seconded by Schlegel to adopt Staff Report FPP 13-03 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Bodman said they needed to add condition #32 as recommended by staff.

**SECONDARY
MOTION TO
(Add
CONDITION #32)**

Bodman made a motion seconded by Larsen to add condition #32 to read:

32. *Prior to final plat, the applicant shall provide evidence that the matter of legal use of the State Trust lands easement accommodating Whitefish Hills Drive has been satisfactorily resolved between the applicant and the Montana DNRC in a manner which clearly demonstrates the easement allows legal use of all lot owners of Whitefish Hills Phases 2-5.*

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
(Add
CONDITION #32)**

On a roll call vote the motion passed 6-1 with Stevens dissenting.

**BOARD
DISCUSSION**

Bodman wanted to address the gun range issue and offered alternate wording for condition #20.

**SECONDARY
MOTION TO
(Amend
CONDITION #20)**

Bodman made a motion seconded by Larsen to amend condition #20 to read:

20. The following additional statements shall be placed on the face of the final plat *and the CC & R's will be amended to acknowledge the same:*
- f) This subdivision is located in an agricultural/silvicultural area and potential nuisances such as noise, dust, odors, and irregular hours of operation are commonplace. As such, the right to farm/log on adjoining properties will not be restricted as a result of the development or occupancy of this subdivision. [MCA 76-3-608]
 - g) This subdivision is located less than one half mile from the Whitefish Rifle and Pistol club, a long-term lessee on State Trust Lands whose lease is in good standing and whose use may be anticipated to continue indefinitely. Residents should understand that gun clubs can be noisy by nature. In addition, other current and future state-authorized uses of neighboring state trust lands, including but not limited to authorized trail networks, will not be restricted as a result of development or occupancy of this subdivision [MCA 76-9-101 & 76-9-103]

**BOARD
DISCUSSION**

The board and Grieve discussed at length if the board should be involved in private CC&Rs, the reasons they were not currently involved, situations when they did stipulate items in the CC&Rs, mitigating impacts in subdivision review with CC&Rs and what happened on occasions if the CC&Rs were changed after final plat.

Grieve and Hogle relayed the section in the Montana Code Annotated (MCA) concerning restrictive covenants.

The board and Hogle discussed if the issue of the gun range fit into what Hogle read and what had been done with similar applications.

Bodman withdrew his motion.

Staff brought up condition #25 which they were uncomfortable with in the staff report since they had read the appropriate section in MCA.

The board discussed the pros and cons of leaving condition #25 in the staff report.

**SECONDARY
MOTION TO
(Strike
CONDITION #25)**

Larsen made a motion seconded by Stevens to strike condition #25 to read:

~~25. Prior to final plat Article V of the CC&R's for Whitefish Hills Forest Phase 2-5 shall be amended to include a wildlife-specific section which includes reasonable specific measures to minimize potential for conflicts between future Lot owners and wildlife and to assist in maintaining quality habitat within the subdivision as recommended in the comment submitted by Montana Fish Wildlife and Parks.~~

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
(Strike
CONDITION #25)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Grieve reviewed conditions he was still comfortable with.

Larsen said staff did a good job on the staff report and the applicant did a good job on the application. He felt for the applicant having to go through the process twice.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
(FPP 13-03)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hickey-AuClaire reviewed the process the application would follow from this point on for the members of the audience.

OLD BUSINESS

Grieve reviewed in depth what staff had learned from a MAP conference they just attended which concerned the recent decision which struck down the protest revision for zoning regulations.

The board and Grieve discussed the repercussions for the decision, why it was deemed unconstitutional, other places where the protest revision might be deemed unconstitutional and other places where the 2/3rd protest revisions had been struck down.

Grieve summarized the RISK map project, where FEMA was doing other studies concerning floodplain and the planned process for implementing the findings. He reviewed what staff would be presenting at the workshop on September 25, 2013,

Heim asked Grieve the progress on meeting with the Evergreen Chamber of Commerce concerning the Evergreen area.

Grieve summarized what had been done so far concerning the Evergreen area.

NEW BUSINESS

None.

ADJOURNMENT

The meeting was adjourned at approximately 9:03 pm. on a motion by Hickey-AuClaire. The next meeting will be held at 6:00 p.m. on October 9, 2013.

Marie Hickey-AuClaire, Chairman

Donna Valade, Recording Secretary

APPROVED AS **SUBMITTED**/CORRECTED: 10 / 9 / 13